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In this chapter. . .

This chapter provides a brief overview of appeals of orders entered in child protective proceedings. It contains discussion of the time requirements for appeals to both the Court of Appeals and Michigan Supreme Court and applicable standards of review.

For discussion of review of referees' recommended findings and conclusions, see Chapter 15.

21.1 Special Time Requirement for Rehearings Following Termination of Parental Rights

If parental rights have been terminated, a petition for rehearing must be filed not later than 20 days after the entry of the order terminating parental rights. MCL 712A.21(1).*

*See Section 12.13 for a detailed discussion of rehearings.

21.2 Court Rules Governing Appeals in Child Protective Proceedings

"Except as modified by [MCR 3.993], chapter 7 of the Michigan Court Rules governs appeals from the family division of the circuit court." MCR 3.993(C)(1).

Subchapter 7.200 of the Michigan Court Rules governs appeals to the Court of Appeals. Pursuant to MCR 7.203(A)(2), the Court of Appeals has jurisdiction of an appeal of right filed by an aggrieved party from the following:

“A judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule.”

The Court of Appeals may also grant leave to appeal. See MCR 7.203(B).

Subchapter 7.300 of the Michigan Court Rules governs appeals to the Michigan Supreme Court. The Michigan Supreme Court may “review by appeal a case pending in the Court of Appeals or after decision by the Court of Appeals (see MCR 7.302).” MCR 7.301(A)(1).

21.3 Appeals to the Michigan Court of Appeals

MCR 3.993(A)–(B) state as follows:

“(A) The following orders are appealable to the Court of Appeals by right:

- (1) an order of disposition placing a minor under the supervision of the court or removing the minor from the home,
- (2) an order terminating parental rights,
- (3) any order required by law to be appealed to the Court of Appeals, and
- (4) any final order.

“(B) All orders not listed in subrule (A) are appealable to the Court of Appeals by leave.”

See also MCL 600.308 and MCL 600.309. An order of disposition leaving the child at home but giving the supervising agency the discretion to remove the child from his or her home is appealable by right to the Court of Appeals. *In re Meeboer*, 134 Mich App 294, 299 (1984).

In *In re EP*, 234 Mich App 582, 590–91 (1999), overruled on other grounds 462 Mich 341 (2000), respondent-mother appealed the trial court’s dispositional order removing the child from respondent’s home, where the child had been staying on an “extended home visit.” Following a dispositional review hearing, the trial court entered the order removing the child from respondent’s custody. The Court of Appeals held that respondent had an appeal by right of the trial court’s order. Although the petitioner maintained supervision of the child, the child was physically residing with respondent when the supplemental dispositional order was entered. The trial court’s order was “an order . . . removing the minor from his or her home” under former MCR 5.993(A)(1).

There is no appeal of right by the petitioner to the Court of Appeals from an order denying termination of parental rights. *In re Youmans*, 156 Mich App 679 (1986), lv den 428 Mich 871 (1987). The petitioner may, however, file a subsequent petition seeking termination after gathering new evidence. *Santosky v Kramer*, 455 US 745, 764 (1982).

21.4 Filing Requirements

In the Michigan Court of Appeals. MCR 7.204(A)(1) provides:

“(1) An appeal of right in a civil action must be taken within

(a) 21 days after entry of the judgment or order appealed from;

(b) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other postjudgment relief, if the motion was filed within the initial 21-day appeal period or within further time the trial court may have allowed during that 21-day period;

(c) 14 days after entry of an order of the family division of the circuit court terminating parental rights under the Juvenile Code, or entry of an order denying a motion for new trial, rehearing, reconsideration, or other postjudgment relief from an order terminating parental rights, if the motion was filed within the initial 14-day appeal period or within further time the trial court may have allowed during that period; or

(d) another time provided by law.

“If a party in a civil action is entitled to the appointment of an attorney and requests the appointment within 14 days after the final judgment or order, the 14-day period for the taking of an appeal or the filing of a postjudgment motion begins to run from the entry of an order appointing or denying the appointment of an attorney. If a timely postjudgment motion is filed before a request for appellate counsel, the party may request counsel within 14 days after the decision on the motion.”*

*See Section 18.13.

Claim of appeal. MCR 7.204(B) provides that in order to vest the Court of Appeals with jurisdiction in an appeal of right, an appellant must file a claim of appeal and the entry fee with the clerk.

The form of the claim of appeal is governed by MCR 7.204(D). MCR 7.204(D)(3) states that “[i]f the case involves a contest as to the custody of a minor child, that fact must be stated in capital letters on the claim of appeal.”

Briefs. MCR 7.212(A)(1)(a) provides the appellant must file five copies of a brief with the Court of Appeals within:

“(i) 28 days after the claim of appeal is filed, the order granting leave is certified, or the transcript is filed with the trial court, whichever is later, in a child custody case or an interlocutory criminal appeal. This time may be extended only by the Court of Appeals on motion.”

A “custody case” is defined by MCR 7.202(5) as “a domestic relations case in which the custody of a minor child is an issue, an adoption case, or a case in which the juvenile division of probate court has entered an order terminating parental rights or an order of disposition removing a child from the child’s home.”

Within the time for filing the brief, one copy of the brief must be served on each party and proof of that service must be filed with the Court of Appeals. MCR 7.212(A)(1)(b).

MCR 7.212(A)(2)(a) provides that the appellee must file five copies of a brief with the Court of Appeals within the following time limits:

“(i) 21 days after the appellant’s brief is served on the appellee, in an interlocutory criminal appeal or a child custody case. This time may be extended only by the Court of Appeals on motion.”

Within the time for filing the appellee’s brief, one copy of the brief must be served on all other parties and proof of that service must be filed with the Court of Appeals. MCR 7.212(A)(2)(b).

Application for leave to appeal. If the time for filing an appeal of right has expired, a party may file an application for leave to appeal. MCR 7.203(B)(5). The application for leave to appeal is also a late appeal, because it was not filed within 21 days of the order that is being appealed. MCR 7.205(F) governs applications for leave to appeal. MCR 7.205(F) provides the following restrictions:

- If the application for leave to appeal is filed more than 12 months after entry of the order or judgment on the merits, leave to appeal may not be granted. MCR 7.205(F)(3). See, however, MCL 600.1041, which requires an application for a delayed appeal of an order of disposition to be filed within six months after entry of the order.

- “The time limit for late appeals from orders terminating parental rights is 63 days, as provided by MCR 3.993(C)(2).” MCR 7.205(F)(5). MCR 3.993(C)(2) states:

“(2) *Delayed Appeals; Termination of Parental Rights.* The Court of Appeals may not grant an application for leave to appeal an order of the family division of the circuit court terminating parental rights if filed more than 63 days after entry of an order of judgment on the merits, or if filed more than 63 days after entry of an order denying reconsideration or rehearing.”

Transcripts and record. Transcripts must be filed within 42 days after they are ordered by the trial court. This period may be extended by motion filed with the Court of Appeals. MCR 7.210(B)(3)(b)(iii).

The lower court record must be filed within 21 days after the deadline for the filing of the appellees’ briefs. MCR 7.210(H).

In the Michigan Supreme Court. An application for leave to appeal to the Supreme Court may be taken from a case pending in the Court of Appeals or after a decision by the Court of Appeals. MCR 7.301(A)(2). If the application is filed before the Court of Appeals’ decision, the application must be filed within 42 days of one of the following:

“(a) after a claim of appeal is filed in the Court of Appeals;

“(b) after an application for leave to appeal is filed in the Court of Appeals; or

“(c) after entry of an order by the Court of Appeals granting an application for leave to appeal.”

If the case is not pending before the Court of Appeals, then the application for leave to appeal is governed by MCR 7.302(C)(2)–(4). MCR 7.302(C)(2) provides:

“(2) *Other Appeals.* Except as provided in subrule (C)(4), in other appeals the application must be filed within 42 days in civil cases, or within 56 days in criminal cases:

(a) after the Court of Appeals clerk mails notice of an order entered by the Court of Appeals;

(b) after the filing of the opinion appealed from;
or

(c) after the Court of Appeals clerk mails notice of an order denying a timely filed motion for rehearing.

“However, the time limit is 28 days where the appeal is from an order terminating parental rights”

MCR 7.302(C)(4) provides that if the Court of Appeals remands the case to a lower court for further proceedings, the application for leave may be filed within 28 days from orders terminating parental rights or within 42 days in other civil cases, after one of the following:

“(a) the Court of Appeals decision ordering the remand,

“(b) the Court of Appeals clerk mails notice of an order denying a timely filed motion for rehearing of a decision remanding the case to the lower court for further proceedings, or

“(c) the Court of Appeals decision disposing of the case following the remand procedure, in which case an application may be made on all issues raised in the Court of Appeals, including those related to the remand question.”

Applications that do not meet the above requirements will not be accepted. MCR 7.302(C)(3).

Appeals of orders terminating parental rights are to be given priority by the Clerks of the Supreme Court and Court of Appeals in scheduling them for submission to the courts. Admin Order No. 1981-6, 412 Mich lxiv (1981).

21.5 Delayed Appeals

Orders of disposition. MCL 600.1041 states that “[a]n application for a delayed appeal from an order of the family division of circuit court in a matter involving the disposition of a juvenile shall be filed within 6 months after entry of the order.”

Orders terminating parental rights. “The time limit for late appeals from orders terminating parental rights is 63 days, as provided by MCR 3.993(C)(2).” MCR 7.205(F)(5). MCR 3.993(C)(2) states:

“(2) *Delayed Appeals; Termination of Parental Rights.* The Court of Appeals may not grant an application for leave to appeal an order of the family division of the circuit court terminating parental rights if filed more than 63 days after entry of an order of judgment on the merits,

or if filed more than 63 days after entry of an order denying reconsideration or rehearing.”

21.6 Standards of Review

Orders of disposition. Orders of disposition are reviewed for an abuse of discretion. *In re Scruggs*, 134 Mich App 617, 621–22 (1984), and *In re Ricks*, 167 Mich App 285, 295 (1984).

Orders terminating parental rights. MCR 3.977(J) states as follows:

“(J) *Review Standard.* The clearly erroneous standard shall be used in reviewing the court’s findings on appeal from an order terminating parental rights.”

An order terminating parental rights is reviewed in its entirety using a “clearly erroneous” standard. This standard of review applies to a trial court’s decision regarding a statutory basis for termination of parental rights, and its decision regarding a child’s best interests. *In re Trejo*, 462 Mich 341, 356–57 (2000). In *In re Cornet*, 422 Mich 274 (1985), the Michigan Supreme Court, quoting *Tuttle v Dep’t of State Highways*, 397 Mich 44, 46 (1976), defined the standard as follows:

“‘[A]n appellate court will set aside the findings of fact of a trial court sitting without a jury when such findings are clearly erroneous. In construing comparable ‘clearly erroneous’ language in Rule 52(a) of the Federal Rules of Civil Procedure, the United States Supreme Court has stated that ‘[a] finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’ . . . Appropriately, the ‘judicial sieve’ with which we have sifted the evidence in this non-jury trial is ‘of finer mesh than the one correspondingly employed on review’ of a jury’s verdict.” *Cornet, supra* at 278.

A refusal to grant a request for rehearing will be reversed by the Court of Appeals only when the refusal represents an abuse of discretion. *In re Johanson*, 156 Mich App 608, 611 (1986).

21.7 Collateral Attack of Jurisdiction

In *In re Hatcher*, 443 Mich 426, 437 (1993), the Court found that subject matter jurisdiction of child protective proceedings is established “by the

contents of the petition after the probate judge or referee has found probable cause to believe that the allegations contained within the petitions are true.” If the trial court lacks subject matter jurisdiction, subsequent proceedings are void; if the court has subject matter jurisdiction, subsequent procedural errors may affect a court’s exercise of that jurisdiction but may only result in reversal.

For purposes of appeal, this means that a party who wishes to attack the court’s exercise of jurisdiction following a plea or trial must do so on direct appeal following the court’s disposition, or during a rehearing or review hearing. No “collateral attack” of the court’s exercise of jurisdiction is possible. *Id.* at 438–44, and *In re Powers*, 208 Mich App 582, 587–88 (1995).

Separate appeals may be taken from the court’s order assuming jurisdiction and the court’s order terminating parental rights. MCR 3.993(A)(1) and (2).

21.8 Stay of Orders

MCL 600.1041 states in part that “[t]he pendency of an appeal from the family division of circuit court in a matter involving the disposition of a juvenile . . . shall not suspend the order unless the court to which the appeal is taken specifically orders the suspension.”